HOUSE OF COMMONS

Select Committee on the Armed Forces Bill

Oral evidence: Armed Forces Bill, HC 1281

Thursday 11 March 2021

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Watch the meeting

Members present: James Sunderland (Chair); Stuart Anderson; Tonia Antoniazzi; Dan Carden; Miss Sarah Dines; Leo Docherty; Martin Docherty-Hughes; Darren Henry; Mrs Sharon Hodgson; Mr Richard Holden; Mr Kevan Jones; Jack Lopresti; Johnny Mercer; Carol Monaghan; Stephen Morgan; Mrs Heather Wheeler.

Questions 104-167

Witnesses

I: His Honour Shaun Lyons CBE, and Professor Sir Jon Murphy, Professor of Advanced Policing Studies, Liverpool John Moores University.

II: His Honour Jeff Blackett, former Judge Advocate General.

III: His Honour Judge Alan Large, Judge Advocate General, and Jonathan Rees QC, Director of Service Prosecutions.

Examination of witnesses

Witnesses: His Honour Shaun Lyons CBE and Professor Sir Jon Murphy.

Q104 **Chair:** Good afternoon. My name is James Sunderland MP, and I am very proud to welcome all of you to the next witness session for the Select Committee on the Armed Forces Bill. It is really important that we have a good session this afternoon. This is an important Bill, and you are all very welcome. We have an hour for the first session. We will go between 14.30 and 15.30 with two key witnesses, and we have a list of prescribed questions that we are going to ask them in due course.

First of all, may I please introduce our guests today? First of all, His Honour Shaun Lyons CBE. His Honour was the author, of course, of the Lyons review, so I am looking forward to hearing what he has to say. We also have Professor Sir Jon Murphy. You are both very welcome indeed. Can I please first of all ask His Honour what Members should call you?

Shaun Lyons: I'm very easy. The shorthand Judge, although technically incorrect because I am no longer one, seems much easier than His Honour.

Chair: Would you be happy with Judge?

Shaun Lyons: Absolutely so.

Chair: And Professor. Thank you so much indeed.

Q105 **Mr Jones:** Judge, my first question is on recommendation 1 in the Service Justice System Review: "The Court Martial jurisdiction should no longer include murder, manslaughter and rape when these offences are committed in the UK, except when the consent of the Attorney General is given." Can you explain why you came to that conclusion?

Shaun Lyons: Yes. I was surprised when I started my review and found that MMR and particularly rapes committed by service personnel in the UK were being prosecuted in the SJS. I had known that the 2006 Act revoked the 50-year exclusion of MMR from the SJS jurisdiction, but I had always understood that the inclusion in the 2006 Act was to cope with rare or exceptional circumstances.

I then investigated this change and found that it had been passed through Parliament to enable the SJS to act in unusual circumstances where, for instance, a service offender had committed an MMR offence abroad and also in the UK. Under the old system, that would have necessitated two trials: one in the service system for the offence abroad and one under the CJS for the offence in the UK.

The extension, therefore, in the 2006 Act was to cope with that, so that one trial could be conducted instead of two. In looking into the background, my excellent small staff were unable to capture the policy papers of the time. I do not think that there is anything sinister in that whatsoever. I think it reflects the difficulty of retrieval of papers.

Looking at more public documents, I found this: before this very Committee itself in 2006, Major General Howell, when talking about the proposal to extend this jurisdiction, said that "the power to try those more serious cases in courts martial in the United Kingdom would be used rarely, but would be useful if a Service man or woman committed related offences abroad." He went on to say: "I do think it is something that is going to be very rare, to be frank, but I can imagine the situation might exist."

Your Committee, as it was constituted in those days, said: "We accept the arguments for extending the jurisdiction of courts martial so that they may consider those serious cases."

Chair: Judge, I'm sorry to interrupt you, but you are very muffled when you turn away from your microphone.

Shaun Lyons: Of course. The Committee went on to say: "However, we note that, unless there is a specific need to try such cases by court martial, public confidence may be better served by their being tried, as now, in the civilian system."

Mr Jones: I was on that Committee, and I concur with what you have just said.

Shaun Lyons: Thank you very much, Mr Jones. Later, in the House of Lords, Lord Drayson addressed the same matter. To take matters shortly, I shall quote just one extract of what he said: "I have already told the House that we do not propose that, under the Bill, murder, rape or treason alleged to have been committed by a serviceman in the United Kingdom will normally be investigated and tried within the service system."

I was therefore surprised to find that the protocol between the DPP and DSP, which had been in force since 2011 and I think merely repeated what was in force in 2009 when the 2006 Act came into force, made no special provision with regard to these serious cases, and they were treated like any other case. That meant, in rough terms, that an offence committed by a serviceman against another serviceperson or their property would be for the service justice system, but when the offence was against a civilian or civilian property it would be for the DSP.

That has led now, instead of this being a rare and exceptional occasion, to its being standard practice to try these matters in the SJS. I am not a constitutional lawyer. I am a child in such matters, but I find it extremely surprising that this practice should have been continuing since 2009. It does not appear to be what Parliament expected to take place, and no one since I made my recommendation has actually addressed that point.

Q106 **Mr Jones:** I sat on that Bill Committee in 2006, and I agree with how you have described it. Can I therefore ask why you think the Government have not implemented your recommendation as written?

Shaun Lyons: I have had no explanation. I am not due an explanation, but I would have imagined that, in turning down the recommendation,

reasons would have been given. I understand that the answer is that it has been decided "to maintain jurisdictional concurrency".

I don't understand that answer—jurisdictional concurrency exists in the 2006 Act. The prosecutors' protocol, to put it crudely, carves that cake at the moment; I am suggesting that cake should be carved differently, to give effect to what Parliament was expecting.

I would expect the protocol to say that, in cases of MMR committed by servicemen in the United Kingdom, primacy lies with the Director of Public Prosecutions, and that if the DPP and the service prosecutor agree that he should be tried in the SJS, then they should, together, seek the covering approval of the Attorney General. I would also, of course, expect those reasons to include the ones that Parliament was expecting.

Q107 **Mr Jones:** May I ask, in terms of the circumstances, how often you think that the Attorney General will have to make a decision in this area? You have already made reference to the protocol; does that need updating or changing?

Shaun Lyons: I note that there is statutory provision for new protocols for England and Wales, for Scotland and Northern Ireland. In Scotland and Northern Ireland, they have not existed before. The one in England and Wales is to be reviewed and updated, in accordance with the provisions in the Bill, and I would expect that to be included in it.

Q108 **Mr Jones:** And in terms of how often this will be used?

Shaun Lyons: How often? Very, very infrequently. There were two cases alive in 2005 and 2006, where a serviceperson had committed offences, in one case in Canada and in the United Kingdom, and, in the other case, in Germany and in the United Kingdom. The point was made that this jurisdiction would prevent two trials in those cases. I do not believe that these circumstances have arisen again since 2006, so I imagine that the Attorney General would be troubled very little by this.

I can, however, imagine circumstances outside those that were discussed in 2006 where it might be appropriate for a matter to be dealt with in the SJS—perhaps a death during a live firing exercise, or such matter where a military court would be entirely appropriate. Then, if the two prosecutors agreed and went to the Attorney General, he could say, "Yes, I agree," and that would provide protection to the SJS against any aspersions being cast about internal justice on the matter; it would have the imprimatur of the chief law officer.

Mr Jones: Thank you very much. Back to you, Chair.

Chair: Thank you, Kevan. We will now jump to question two, so could Stuart Anderson please come in?

Q109 **Stuart Anderson:** Thank you, Chair. Professor, my next question is to you; I want to highlight that recommendation 10 of the policing review makes a similar recommendation—that these crimes should be

investigated by civilian police when committed within the UK, with a protocol for joint investigations. Could you briefly explain to the Committee what the reasons for this are?

Professor Sir Jon Murphy: Beyond my recommendation would be a logical reflection to follow Judge Lyons's recommendation. It is important to remember the context in which my report was commissioned and written. There had been a series of high-profile failed investigations, resulting in adverse publicity. This continued to be evident during the course of my review as, whilst I was carrying it out, there was a further high-profile collapse of a case at a court martial, of which I subsequently did a second review.

These cases provided pressure groups with evidence to support their assertions about the quality of justice that was being received by victims in the service justice system. Of course, concerns have been expressed about what is perceived to be a very low conviction rate in cases of sexual offending.

I found the service police to have many fine officers who were well trained, and who want to do—and many cases do—a good job. But the reality of investigation within the service justice system is that instances of serious crime are extremely low, but when it takes place it is the most serious type of offending and requires the skills of experienced and skilled investigators.

Predominantly, with the three issues that we have discussed—murder, manslaughter and rape—the workload is not high. Across the three services, each SIB investigator is called on to investigate approximately a single crime a year. When you compare that with the caseload of the civilian detective, it is probably a hundred times less. Consequently, through no fault of their own, they lack experience of the day-to-day grind that their civil counterparts have, of investigating many crimes and getting the experience that flows from that. That led to the context that I have described.

I can give you an example of what I am talking about. At one point I had a conversation with the senior investigating officer—the most important investigator—on a homicide investigation. I was discussing the merits of a particular tactic that he was adopting and questioning it. I asked him, when he had done that, "How many homicides have you investigated previously?" His answer was, "None, but I've done the course." Accepting that we all have to start somewhere, that gives no confidence or comfort to the family of victims that they are going to get justice.

Fundamentally, every victim of crime, wherever they are, in the service or out of the service, deserves the very best possible investigative service that they can be given, in terms of the quality of the investigation and the support given to them as a victim or to the families of victims. It is, to be fair, unrealistic to expect the victim of a crime within the service in a theatre of war, for example, to receive the very same investigative quality that they would get in London. None the less, the service police are under

a duty to provide the very best possible service they can in the circumstances that the victim unfortunately finds themselves in.

In my opinion, in the UK, the best service can be achieved by the civilian police supported by the SIB. Civilian police have specialised homicide investigation teams and sex offence units dedicated to just that. The officers are dealing with just those offenses on a daily basis. They have specialist forensic officers and forensic medical examiners, with dedicated facilities. They have dedicated witness and victim support units. They have specialist CPS prosecutors and they are not diverted from investigations to perform other functions or complete training, causing unnecessary delay and not best serving the victims with justice. None of those things exist in the service police.

Stuart Anderson: Thank you for that explanation. I believe my colleague Darren Henry wants to come in with a few supplementary questions.

Q110 **Darren Henry:** Professor Murphy, thank you for that. I hear your argument on the point about the numbers and experience that civilian investigators have, but with very serious crime, couldn't you apply that across the service justice system? In which case, why have a service justice system at all? In peacetime, the numbers are not going to be great and the set-up is not necessarily going to be as comprehensive as in civilian life. Do you want to comment on that, please?

Professor Sir Jon Murphy: We do need a separate service justice system, primarily because the service is an entirely different context and we all understand that, and secondly because the service has to operate overseas, because the civil police in the UK have no jurisdiction. One point that I would like to emphasise, which I think has been lost in some quarters, is that my recommendation is not that the civil police investigate alone, but that they do it alongside their service police counterparts, who provide access to the service, provide military context, and gain experience at the same time. It is a joint effort, not the civilian police doing it alone.

Q111 **Darren Henry:** So, Professor Murphy, you are commenting on the importance of a protocol for joint investigations, then.

Professor Sir Jon Murphy: Yes.

Q112 **Darren Henry:** Thank you very much. To Judge Lyons, just commenting on what you have heard in answer to that question to Professor Murphy, I would be interested in your opinion. The Government are doing some scoping work for defence serious crime capability, so do you think that would go some way towards addressing the issues recently brought up by Professor Murphy?

Shaun Lyons: Yes, I most certainly do. Professor Murphy and I worked slightly separately in the first stage of this review, with him dealing with policing and me dealing with the justice system outside that, and we worked together to produce the final report. I am happy to say that we

were as one on every point, and throughout our study, we believe that the SJS may draw upon the strength and experience of the CJS.

To give examples, it does in many areas. The assistant judge advocates, all six of them, also sit as recorders in the Crown court, and they have what are known as sex tickets: they are authorised to try these matters in the Crown court. The previous Judge Advocate General, who I believe is giving evidence before you later, insisted that this should happen, and that all his judges should spend two or three months a year in the Crown court. There, they draw upon the strength and expertise of the civil system. The prosecutor has in his team service lawyers and ex-CPS lawyers, and the ability in court to draw upon the Bar to present cases. This is using the strengths of the criminal justice system to assist and strengthen the service justice system, and everything that Sir Jon has said in his recent answer, and also in the proposal for the defence serious crime unit and very close links with the civilian police, is designed to improve and strengthen the service justice system.

Darren Henry: Thank you.

Q113 **Mrs Wheeler:** May I ask this question to both of you, please? How important is it that jurisdiction is clear from the moment a crime is first reported? What I am getting at is, are you aware of any specific challenges when crimes are initially investigated by the service police but then prosecuted in civilian courts, and vice versa?

Shaun Lyons: If I may kick off briefly, I will pass this on to the expert shortly.

It is absolutely fundamental that the protocol is clear and demonstrably understood by those who are generally first on the scene, because that is where jurisdiction starts. To draw an example—I know Sir Jon will take it on from there—if we go back to the topic of rape in the United Kingdom, at the moment, if an estranged serviceman goes to the family home and, in the course of that meeting, rapes his wife, if the wife is a civilian, the civil police have jurisdiction. If the wife is also a serviceperson, the SJS has jurisdiction. I find that anomalous, and that is one of the reasons for my recommendation 1, but it does present rather neatly the problem faced by those investigating in the first instance about where the dividing line should come. At that point, I will pass you straight on to the expert.

Professor Sir Jon Murphy: I do not consider myself to be an expert, but thank you for that. It is not ideal when an investigation passes from one jurisdiction to another, but as the judge has highlighted, it is really important that the protocol is not only clear but is followed. In some respects the protocol needs to be quite specific, to avoid giving people latitude to make decisions that were never intended. I will give an example of the consequences. The policing review visited the military detention centre at Colchester, where I think 36 people were in the military prison for military offences. When they spoke to the staff at the military prison, it was clear that those were either sex offences or domestic violence offences. They had been dealt with as disgraceful

conduct and other service offences, but the reality was that they were sex offences and DV offences.

The consequence is that, in the case of sex offenders, they do not get a criminal conviction, they do not get on the sex offenders register, and when they leave the service they can get jobs in all walks of life, which is clearly less than desirable. Similarly, in relation to DV matters, there are individuals in the prison who have not been charged and convicted of DV offences, and consequently the multi-agency risk assessments are not completed, and they leave the service with no record of having a DV offence. That has already been a matter of significant concern in the case in north Wales, where an ex-RAF individual with a history of DV not having been dealt with in the correct manner in the service went on to commit a homicide in civilian life. So it is not just about what the protocol says; the protocol must be followed, otherwise dangerous people can slip the net.

Shaun Lyons: If I may just come back in on that, I draw the Committee's attention to the fact that, immediately following my recommendations about rape and sexual assault, I also recommended that domestic violence and child abuse cases should also be dealt with by the DPP and the CPS in all cases.

Q114 **Mrs Hodgson:** Good afternoon, Judge and Professor, and thank you for attending this session. I just have a follow-up question to the question from Heather Wheeler. Based on your investigations, do you think that it was the original intent of the 2006 Armed Forces Bill for the military to investigate serious blue-on-blue crimes in the UK? As a follow-up to that, what considerations therefore led you to conclude that civil courts should try serious crimes?

Shaun Lyons: I do not believe that the intention behind the 2006 Act was to do away with the 50-year previous exclusion of the shorthand IUs and MMR by service personnel in the United Kingdom. I believe it was there to cope with some exceptional circumstances where the interests of justice would be served by not holding two separate trials—one in each jurisdiction—but all matters being in front of one court. I believe that that original intention has been lost, and that what you call blue on blue is being tried—let us be quite clear, legally—because the Act says it can, but in my belief—I cannot use the word "improperly"—against the intentions of Parliament as they appear to have been in 2006. My proposal would stop that.

Q115 **Mrs Hodgson:** Thank you. What led you to that conclusion in your review?

Shaun Lyons: Well, having read the statements to this Committee and to the House about the purpose of changing the Bill, it clearly indicated that there will be this very restricted use of it. What I cannot answer, and perhaps other witnesses who follow me can, is why what appears to be Parliament's intention has not been followed.

Q116 **Mrs Hodgson:** Have you anything to add, Professor? Any thoughts on that?

Professor Sir Jon Murphy: Not specifically, but if I may, I have one further point on clarity of jurisdiction. It is not just a service police issue—it is a civilian police issue as well. There are some cases that the service police would refer in one part of the country; they may not in another. That may be because of the culture within the service police. It may equally be because in some parts of the country the civilian police are happy to accept it and take the investigation on, and in others they are less happy. The clarity needs to be on both sides, not just in the service police.

Q117 **Martin Docherty-Hughes:** I am grateful to you for giving evidence. Judge Lyons, you have recommended that other ranks—the OR-7—should be eligible to sit on a court martial board, and that has been included in the Bill. I wonder if you can say why you think that other ranks should not, especially those below the OR-7.

Shaun Lyons: Traditionally, the formation of the board of the court martial has been officers and warrant officers. The reasoning behind this is clear and still is very valid. The court martial is a military court. The board is not a jury. It decides, of course, guilt or innocence as a jury does, but a military court goes on with the board deciding upon sentence with the assistance of the judge advocate. The military court is designed for the maintenance of discipline, to ensure operational effectiveness. So, it has always been thought that, in a hierarchical organisation, the board should consist of those who exercised command.

When I was looking at this, I reviewed the practice in the common law nations club, if I can call them that. I found that in Australia and New Zealand, they still maintain the officer and warrant officer routine. In Canada, they have dropped to include sergeants and equivalents, while in America, for many years, since shortly after the second world war, they have included what are known as enlisted men, without too much emphasis on what level. The American system does not actually give much help to us because, of course, the American system deals with its panels in a very different way. The court martial boards are open to challenge, like a civilian jury, and the prisoner has to request to have enlisted men on. In this country, we don't allow accused persons to choose their tribunal, as it were.

I considered, therefore, that moving down to OR-7 was the wise and proper step at this stage. It is essential that the board in a military court has sufficient experience and understanding of the military to perform both its jury role—in other words, guilty or not guilty—but also its equally important sentencing role, and the maintenance of discipline—

Q118 **Martin Docherty-Hughes:** Forgive me for interrupting, Judge. I am not here to defend the common law jurisdiction, given the fact that I am a Scottish constituency MP, in which there is a mixture of both Roman and common law. But are you effectively saying that, for instance, a corporal who has been in the armed forces for a number of years has neither the skill nor the ability to be a peer on a court martial panel, only because of tradition?

Shaun Lyons: No, I am not. If I may finish—officers who sit on the board have to be of at least three years' seniority, indicating, as you have, the need for some length of service. Equally, warrant officers will all have had a very long length of service. You will have seen that two of the services agreed my proposal for OR-7. The naval concern was that some of its OR-7 ranks had little experience of the service. I am not saying that a corporal who had served 12 years might not have relevant and important experience; I am saying that, at this time, as we change what has been long-standing for many years, it is advisable, as a first step, to move down to the chief petty officer and other levels and see how it works.

Q119 **Martin Docherty-Hughes:** Can I infer from what you have said that it is the senior ranks who have informed you that they do not think it should go any lower than the OR-7?

Shaun Lyons: I am sorry; I must have misled you. What I said was that the services, the Army and the RAF, agree—

Q120 **Martin Docherty-Hughes:** Who do you mean by the services specifically? Do you mean civil servants or senior members of the command?

Shaun Lyons: No, the armed forces themselves. When I floated this proposal, I got agreement from the Army and the RAF, but the Navy had reservations because some of their OR-7 ranks have a very short length of service.

Q121 **Martin Docherty-Hughes:** Would you conclude, then, that if a corporal or sergeant, for example, had an extensive element of service, there should be nothing to preclude them from being able to be a peer on a military court martial board?

Shaun Lyons: A peer as to guilt or innocence can be of any rank. I have no difficulty with that—that matches a jury. This is a military court concerned with the maintenance of discipline. This has meant that, in the past, it has been confined to officers and warrant officers. I believe, in the modern world, that the maintenance of discipline is in everyone's interests, and as a first step I would wish to see it opened to OR-7. I think opening it further is a step too far at this stage.

Q122 **Martin Docherty-Hughes:** Finally, would you not also agree that the system needs the confidence of the lower ranks to be an effective manager of discipline?

Shaun Lyons: Yes, I do. I believe it has that. To quote a statistic off the top of my head, for summary matters coming before commanding officers for service offences, over 98% of those who appear indicate a plea of guilty. To me, that typifies a trust in the system, the outcome of their plea and demonstrates that the armed forces is made up of self-disciplined volunteers.

Q123 **Martin Docherty-Hughes:** Forgive me, Chair, for just pushing this slightly, because it is an important issue. I am a member of the Defence Select Committee, and we have the ombudsman consistently saying that

there are many issues that do not get to a court martial because people have no confidence in reporting them. People, predominantly women and members of black minority ethnic communities, have no confidence at all. The lower ranks have no confidence. Do you not see that there is a joined up element here that, without the peer element—that is, the lower ranks able to participate—the confidence that you think it has does not exist?

Shaun Lyons: Well, what can I say? I hear what you have said, Mr Docherty-Hughes, and I do not agree with you.

Martin Docherty-Hughes: Maybe the evidence put forward to the Defence Select Committee is to the contrary.

Chair: Thank you, Martin.

Q124 **Miss Dines:** This is a question for Judge Lyons. Recommendation 4 suggested that, when a board drops to five members, unanimity should be required. That has not been implemented by the Bill, instead requiring a qualified majority of four to one. Is this adequate in effecting change?

Chair: Witnesses, did you get the question? Miss Dines was drifting in and out.

Shaun Lyons: Yes, I think I have got the question. The starting point is that court martials always have—and still do—acted on a simple majority. If the court martial is three, two is enough. If the court martial is five, three is sufficient. In making the proposal, which has been accepted, that we move to three-man and six-man boards for the more serious offences, I paralleled the six with the 12 in the jury to reach the figure of five out of six being equivalent to 10 out of 12. When a civil jury drops to nine, the rule is that it has to be unanimous. I followed that when the six-man dropped to four. I notice that is not followed, and I accept that that is a military judgment. Let me explain.

Back in the ’50s, before the 1955 and 1957 Acts were brought into force, which later were subsumed in the 2006 Act, there were two Committees which looked at courts martial. One Committee said that they should be unanimous; the other said there should be a majority decision. Parliament at the time took the view that the majority decision was the right way to go, and I have no doubt that a mainspring behind this was the need for certainty. I believe that it comes into effect now.

The need for unanimity, if you drop down to five, means that there may be retrials. Retrials are not good for military efficiency, and I accept that a reversion to the majority principle in this case is sufficient. Quite simply, it means that if you are found guilty by a six-man tribunal, you will be found guilty either by four, five or six, which is still a comfortable majority.

Q125 **Tonia Antoniazzi:** Would having some cases tried in civilian courts undermine the military justice system?

Shaun Lyons: No, I don’t think so. All I have been arguing for in my recommendation, which has not been accepted, is that we should revert to the situation which ran for 50 or more years until the Act came into force

in 2009. I cannot see that this has any detrimental effect on the service justice system.

Professor Sir Jon Murphy: Accepting the point of the question, I think something is lost in the question which has been lost elsewhere. The question should be: where will a victim best receive justice? So while the potential to undermine the service justice system is a consideration, the victim seems to get lost in all this. In the criminal justice system, the victim is placed at the heart of that system; in the military system, the victim is not.

Q126 **Tonia Antoniazzi:** Professor, are there deficiencies in data collection in the service justice system, including the obtaining and sharing of data from the system?

Professor Sir Jon Murphy: When I completed my research, which was late in 2017, and wrote my report in early 2018, yes, that was absolutely the case. We had difficulty obtaining meaningful, accurate data on which to draw conclusions. How that has improved, I am not aware.

Q127 **Tonia Antoniazzi:** Are proposals to solve these deficiencies adequately addressed in the Bill?

Professor Sir Jon Murphy: There are recommendations in the report in terms of the two systems used by the service police, COPPERS and REDCAP. I cannot recall whether that recommendation is specifically included in the Bill.

Tonia Antoniazzi: Thank you. I don't know whether you have anything to add to that, Judge.

Shaun Lyons: On the question of data management, the report made extensive recommendations about how data should be managed, captured and reported to the Service Justice Board on a regular basis. I believe all the recommendations have been taken, and I very much hope that the recording and presentation of data will improve with the passage of time.

Tonia Antoniazzi: Thank you very much, Chair.

Q128 **Chair:** Thank you, Tonia. We have about 15 minutes left. I am going to open the floor to questions in a second, but first could I please ask a question myself of both witnesses? I suspect that there may be an element of marking your own homework with this question, but given your extensive dealings with all three services, could I please ask both of you how you feel this Bill might be received within the armed forces? The judge first, please.

Shaun Lyons: My feeling is that, as has been evidenced—I think the Minister has said at some stage he has accepted something like 80 recommendations when he was talking about not accepting recommendations 1 and 2. I found, in dealing with the services, a widespread acceptance of anything that they felt would strengthen both the efficiency and the standing of their system. There was, for instance, complete acceptance of moving to a six-man board instead of a five-man

board for serious offences. They all acknowledged and realised the value of paralleling the civil system there and of qualified majority verdicts, as long as it was consistent with military necessity. I believe, therefore, the Bill will be widely accepted.

Chair: Thank you, Judge. Could I ask the professor the same question?

Professor Sir Jon Murphy: If I may, I will answer that specifically in relation to the policing recommendations. The people I have spoken to—people I have the greatest respect for—see the sense in almost everything that I am recommending and the value of it. However, tradition is a very powerful thing, and in particular the recommendation of a DSCU has generated very mixed views in the service. That's possibly reflected in the fact that, since I have submitted the report, I have had no part in work that has gone on since that time. That has actually been remedied in the last few weeks, when I have been asked to advise the latest iteration of a group that has been given the task of implementing the DSCU.

Q129 **Chair:** Thank you, Professor. Could I please ask just one quick supplementary question before moving across to Kevan Jones? As a former commanding officer myself, it's my clear view—I'm showing my hand here—that the Bill is much needed and is progressive. Did you get a sense, in your negotiations with the armed forces, of a relief, perhaps, that now that we have left the European Union, the UK armed forces have retained their ability to manage the service justice system as they see fit? The judge first, please.

Shaun Lyons: I think, rather than particularly with reference to Europe, there is within the forces a desire to maintain the structure and improve the structure that has served them on global deployments for the period since the second world war. The forces are now, as we know, at their historically lowest number for many decades. There are still 150,000 of them. They are still, daily, scattered all around the globe. The service justice system, as we have it, they carry as a piece of jurisdictional armour, like a snail carries its shell. And I think that the services are very pleased that the system that has stood them so well for so many years is basically continuing—although bettered, the professor and I hope, by the suggestions we have made.

Chair: Thank you, Judge. And the professor, please?

Professor Sir Jon Murphy: I have nothing to add to that. It's three years since I engaged with the service police in relation to the service justice system review and the issues around Europe were very much in their infancy, so it was not something that featured in our discussion and I couldn't give a qualified opinion on what their thoughts are.

Chair: Thank you very much indeed. I will hand across now to Kevan Jones.

Q130 **Mr Jones:** Professor, can I just return to the issue that you raised around the investigation by civilian police—the recommendation that you should have a joint protocol for investigation? I just wondered whether you could

talk through how that would work in practice, because if we are talking about whoever gets there first—I served on the Defence Committee that then led to the Blake inquiry into Deepcut and one of the problems there was that the service police investigation initially was woeful, and by the time Surrey police were involved a lot of the evidence had been lost or the evidence trail had been broken.

How would it work in practice, in terms of who would actually take primacy, because clearly whoever gets to the crime scene first is going to be important in securing the evidence and ensuring that witnesses are identified, etc.? So, how do you see it working in practice?

Professor Sir Jon Murphy: There is a read-across to civilian policing in this, in terms of offences that cross force borders. So, if you use the example of murder, I was the chief constable of Merseyside police and if a body was found half a mile across the border in Lancashire or Cheshire that related to Merseyside organised crime, the decision would be based on, "Which force has got the best opportunity to secure justice for the victim and detect the crime?" So, Merseyside would take the crime; Lancashire wouldn't take it simply because it was on them.

That said, and this would be the case with the jurisdiction with the service police, there is an inevitability when you get that kind of scenario, and it's similar to something that happens inside the wire: the first responders will be, for example, the Royal Military Police—it is likely the Royal Military Police, but not always. So, provided that they are competent in being first responders, which by and large they are—notwithstanding, like civilian policing every now and again, a case going very badly wrong, because some individuals are not as good as they should be—as long as they are competent in what they do as first responders and they comply with the golden hour principles, in accordance with an agreed protocol that is specific, and they have called out the civilian police, then there shouldn't be any problem.

Things fall down generally because people either don't know there is a protocol or don't follow the protocol.

Q131 **Mr Jones:** So, who actually is the first responder is irrelevant, as long as, one, they are capable of doing the basics, but also that the protocol that would then come into place is followed, because thinking back to Deepcut, a lot of the initial investigation was clearly by the military police, and by the time the civilian police actually got involved, as I said, a lot of the basic evidence, which would not have been done—one of the things, for example, in many of the cases was that there was an assumption of suicide straight away, before actually there was a full investigation. So, as long as that protocol is robust, do you think that would stop that type of thing happening again?

Professor Sir Jon Murphy: It comes back to the point I made before—having a good protocol that is clear is one thing, and people following it is another.

One thing I have observed with the service police, which is entirely understandable and actually in some respects goes to their credit, is that they want to investigate. They like to investigate, and they haven't got much to investigate. So there is a tendency on occasions to hang on to things that perhaps might have been better dealt with in a different way, not for any bad reason but simply because they want the opportunity to practise their skills.

That's why I recommended the secondments for six months into civilian police forces, to immerse them in the day-to-day grind of a CID office and pick up skills that they would take years to pick up in the Special Investigation Branch, or SIB, if ever.

Mr Jones: Thanks very much. Back to you, Chair.

Chair: Thanks, Kevan. We have got time, I suspect, for one last question, so I will ask Richard Holden to come in, please.

Q132 **Mr Holden:** Hello, Judge. I just wanted to ask you, particularly on the issue around moving down to OR-7s on panels, why are we following Australia and New Zealand, rather than going to OR levels 5 and 6, as Canada has done? Is this a case of following rather than leading? Could you explain why we are making that distinction, and why that is your recommendation, rather than going further?

Shaun Lyons: Yes, of course. I may have misled; I hope not. In looking across the board, the Australians and New Zealanders still retain officers and warrant officers only. The only nation that has moved is Canada, which has gone to sergeant. That has happened recently, because when I wrote my report, there were still officers and warrant officers. I noticed yesterday that the Act now says sergeant, but I have not been able to track the policy papers that led to it.

They have obviously chosen one level below the one, basically, that I have chosen. I really am in the art of the possible; let me be quite honest. I wished to start this slight democratisation of the system. Dealing as we are with a hierarchical society, I believed that the best way was to step down one to these very senior and reliable non-commissioned officers and see how it goes. I am not saying in the future that it should not spread further. A discrete decision should be taken on that in due course. I hope that that helps.

Mr Holden: It does. Thank you very much.

Chair: That was a very fast question with a very fast answer. We still have three minutes, so we can fill the time if we need to. Any last burners? Well, I think we will stop there. It is the obvious place to do so.

I thank the two witnesses for a very enlightening session. Thank you for your candour as well. To His Honour Shaun Lyons CBE and to Professor Sir Jon Murphy, thank you so much indeed. Good day to you both. For the rest of the Committee, we are going to break just for about a minute to get organised for the next session.